

In the United States Court of Federal Claims

Nos. 18-204C, 18-206C, 18-207C, 18-208C, 18-211C, 18-214C, 18-216C, 18-220C,
18-229C, 18-238C, 18-239C, 18-245C, 18-246C, 18-248C, 18-251C, 18-252C, 18-261C,
18-275C, 18-328C, 18-498C
(consolidated)

(Filed: May 25, 2018)

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FMS INVESTMENT CORP., *et al.*, *
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Plaintiffs, *
*
v. *
*
THE UNITED STATES, *
*
Defendant, *
*
and *
*
PERFORMANT RECOVERY, INC., *et al.*, *
*
Defendant-Intervenors.*
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ORDER DISMISSING CASES

On May 7, 2018, the Government filed a motion to dismiss the above-captioned consolidated bid protest and to lift the February 26, 2018 Preliminary Injunction (“PI”) issued in this case, Dkt. No. 106, arguing that the Department of Education’s (“ED”) decision to cancel the solicitation at issue in this case rendered Plaintiffs’ claims moot. Dkt. No. 189, at 1. Shortly thereafter, the following twelve Plaintiffs moved for leave to file supplemental pleadings to add claims that ED’s decision to cancel the solicitation was arbitrary, capricious, and contrary to law: FMS Investment Corp. (Dkt. No. 214); Account Control Technology, Inc. (Dkt. No. 215); Texas Guaranteed Student Loan Corp. (Dkt. No. 221); Transworld Systems, Inc. (Dkt. No. 223); Gatestone and Co. International, Inc. (Dkt.

No. 226);¹ GC Services Limited Partnership (Dkt. No. 227); Continental Service Group, Inc. (Dkt. No. 228); Williams and Fudge, Inc. (Dkt. No. 230); CBE Group, Inc. (Dkt. No. 233); Delta Management Associates, Inc. (Dkt. No. 235); Progressive Financial Services, Inc. (Dkt. No. 236); and Central Credit Services, LLC (Dkt. No. 246) (collectively, “Moving Plaintiffs”). In their motions, the Moving Plaintiffs assert that their claims are not moot because the Court has bid protest jurisdiction over their supplemental claims challenging ED’s decision to cancel the solicitation.

On May 18, 2018, 17 parties, including defendant-intervenors Performant Recovery, Inc. (“Performant”) and Windham Professionals, Inc. filed formal responses to the Government’s motion to dismiss.² Of the 17, 14 opposed the motion, two did not oppose, and one—Automated Collection Services, Inc.—filed a Notice with the Court indicating that it did not oppose the Government’s motion and would be filing a new bid protest complaint in the Court challenging ED’s cancellation of the solicitation. Dkt. No. 216. The Government filed its reply on May 23, 2018, and the Court has deemed oral argument unnecessary.

Additionally, on March 15, 2018, Performant filed a motion for partial dismissal of all counts in Plaintiffs’ complaints that allege ED extended preferential treatment to Performant during the evaluation process because of Education Secretary Betsy DeVos’ former financial ties to Performant. Dkt. No. 140. The parties concluded briefing Performant’s motion on April 26, 2018, and the Court likewise deems oral argument unnecessary.

For reasons to be explained in a more substantive Opinion in the coming days, the Court GRANTS the Government’s motion to dismiss, LIFTS the February 26, 2018 PI, DENIES Plaintiffs’ motions for leave to file supplemental pleadings, and DENIES Performant’s motion for partial dismissal as MOOT. The Clerk is directed to dismiss Plaintiffs’ complaints without prejudice. No Costs. For the sake of judicial continuity and efficiency, any new protests that may be filed challenging ED’s decision to cancel the solicitation should indicate that they are related to the FMS Investment Corp. line of cases.

IT IS SO ORDERED.

¹ The Court notes that Gatestone did not file a formal motion for leave to file supplemental pleadings; rather, it requested leave in its response to the Government’s motion to dismiss. See Dkt. No. 226.

² The following Plaintiffs did not file a formal response to the Government’s motion: Delta Management Associates, Inc.; Coast Professional, Inc.; Collecto, Inc. d/b/a EOS CCA; Immediate Credit Recovery, Inc.; and Allied Interstate LLC. The Court notes that Coast Professional, Inc., Collecto, Inc. d/b/a EOS CCA, Immediate Credit Recovery, Inc., and Allied Interstate LLC indicated to the Court on May 11, 2018 that they did not intend to oppose the Government’s motion. See Dkt. Nos. 204, 207, 211, and 212.

s/ Thomas C. Wheeler
THOMAS C. WHEELER
Judge